

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Thurmond Guess Sr.,

Plaintiff,

vs.

Leonardo Brown As Richland County
Administrator, Darrell Jackson Sr, Rose Ann
English, Alfred T. Guess, Marjorie Guess,

Defendants.

Civil Action No. 3:23-6408-CMC

ORDER

This matter is before the court on review of Plaintiffs' *pro se* Amended Complaint. ECF No. 11. In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02 (B)(2)(c), DSC, this matter was referred to United States Magistrate Judge Shiva V. Hodges for pre-trial proceedings and a Report and Recommendation ("Report").

On February 26, 2024, the Magistrate Judge issued a Report recommending the Amended Complaint be summarily dismissed without prejudice and without issuance and service of process. ECF No. 14. The Magistrate Judge advised Plaintiff of the procedures and requirements for filing objections to the Report and the serious consequences if he failed to do so. Plaintiff filed objections on February 29, 2024. ECF No. 17.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *See Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a de novo determination of any portion of the Report of the Magistrate Judge to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. *See 28*

U.S.C. § 636(b). The court reviews the Report only for clear error in the absence of an objection. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that “in the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.”) (citation omitted).

The Report recommends dismissal of the *Monell* claim because there is no policy or custom alleged to have been violated here, and a municipality was not sued. It also recommends dismissal of the § 1983 constitutional claims against the private citizens (all Defendants except Brown); and against Brown because the easement was filed before Brown was County Administrator and Plaintiff’s allegations regarding a meeting in 2022 were insufficient to show Brown violated his rights. ECF No. 14.

In his objections, Plaintiff alleges he has sufficiently pleaded the elements of an action under 42 U.S.C. § 1983 and a *Monell* claim. ECF No. 17 at 2. Plaintiff apparently warned Brown he was “acting under color of state law” and violating the Constitution, but Brown stated in a letter he did not intend to give the property back. *Id.* Plaintiff attaches a letter signed by Brown noting the easement Plaintiff disputes has been in effect for over 30 years, and the time for contesting the signatures was within two years of execution. ECF No. 17-1 at 5.

The court agrees with the Magistrate Judge the Amended Complaint does not set forth a viable federal claim under § 1983 or *Monell*. Plaintiff’s objections are overruled for the reasons stated in the Report: he has not alleged a specific policy that was violated; Defendants other than Brown are not state actors, and he fails to state a claim against Brown under § 1983. Claims under

Monell are restricted to municipalities and not a single actor. In addition, this case has essentially identical allegations and objections as Plaintiff's previous case. Plaintiff is warned if he attempts to file another case with the same allegations, a pre-filing injunction may be ordered. After reviewing the record of this matter, the applicable law, the Report and Recommendation of the Magistrate Judge, and Plaintiff's objections, the court adopts and incorporates the Report and Recommendation by reference in this Order. Plaintiff's Amended Complaint is hereby summarily dismissed without prejudice and without issuance and service of process.

IT IS SO ORDERED.

s/Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
Senior United States District Judge

Columbia, South Carolina
March 26, 2024